United Nations A/HRC/WGAD/2019/71

General Assembly

Distr.: General
14 February 2020

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-sixth session, 18–22 November 2019

Opinion No. 71/2019 concerning Issa al-Nukheifi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 9 August 2019 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Issa al-Nukheifi, Abdulaziz Youssef Mohamed al-Shubaili, and Issa Hamid al-Hamid. The Government replied to the communication on 18 September 2019. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Issa al-Nukheifi is a citizen of Saudi Arabia and a political activist. He was born in 1971. He usually resides at al-Wdyea Street, Mecca, Saudi Arabia.

5. Abdulaziz Youssef Mohamed al-Shubaili is a citizen of Saudi Arabia, a human rights defender and a co-founder of the Saudi Civil and Political Rights Association. He was born in 1985 and usually resides in Qasim, Saudi Arabia.

6. Issa Hamid al-Hamid is a Saudi citizen, a human rights defender and a co-founder of the Saudi Civil and Political Rights Association. He was born in 1967. He usually resides in Qasim, Saudi Arabia.

(a) Arrest, detention and trial

(i) Mr. Al-Nukheifi

7. The source reports that Mr. Al-Nukheifi was arrested for the first time on 15 September 2012, three weeks after appearing on television and accusing the local authorities in Jazan of corruption and of committing human rights violations. On 29 April 2013, the Specialized Criminal Court sentenced him to three years in prison and a four-year travel ban on the basis of article 6 of the Anti-Cyber Crime Law. Mr. Al-Nukheifi was released on 6 April 2016 after completing his sentence.

8. The source informs the Working Group that following his release, Mr. Al-Nukheifi was consulted as part of the preparations for the visit of the Special Rapporteur on extreme poverty and human rights to Saudi Arabia scheduled for January 2017. On 17 December 2016, Mr. Al-Nukheifi received a call from the Criminal Investigation Department, summoning him to Al-Nouzha police station in Mecca for questioning. Upon reporting to the police station the following day, Mr. Al-Nukheifi was immediately arrested. He was questioned by the Bureau of Investigation and Prosecution about tweets he had published calling for the release of members of the Saudi Civil and Political Rights Association, and about his contact with international human rights organizations. In addition, Mr. Al-Nukheifi was interrogated about his new Twitter account, which called for democracy in Saudi Arabia and the establishment of a directly elected "Saudi Popular Parliament".

9. The source submits that on 30 December 2016, Mr. Al-Nukheifi was transferred to Mecca General Prison, where he was forced to sleep on the floor without a blanket and repeatedly threatened with torture.

10. According to the source, Mr. Al-Nukheifi's trial before the Specialized Criminal Court began on 21 August 2017. This was the first time that he was brought before a judge and officially informed of the charges against him. Mr. Al-Nukheifi was charged with seeking to destabilize the social fabric and national cohesion, on the basis of paragraph 8 of Royal Decree No. 16820; communicating with and receiving money from foreign groups considered to be enemies of the State, on the basis of paragraphs 5 and 6 of Royal Decree No. 16820; and adopting a Takfiri approach by accusing the Guardians of Saudi Arabia of being infidels and using a personal cell phone and the Internet to store and transfer information that was allegedly harmful to the public order, on the basis of article 6 (1) of the Anti-Cyber Crime Law. He was also charged under article 1 (3) of the 2017 counter-terrorism law and under Royal Decree A/44. On 28 February 2018, the Specialized Criminal Court sentenced Mr. Al-Nukheifi to six years of imprisonment, and imposed a six-year travel and social media ban on him upon his release. On 7 April 2018, in a decision that cannot be further appealed, the court of appeal confirmed the sentence.

11. In July 2019, it was reported that Mr. Al-Nukheifi was being subjected to ongoing ill-treatment, including being stripped of his clothes and having his hands and feet shackled.

(ii) Mr. Al-Shubaili and Mr. Al-Hamid

12. The source reports that Mr. Al-Shubaili and Mr. Al-Hamid were the last remaining free members of the Saudi Civil and Political Rights Association, which had filed local lawsuits against the Ministry of the Interior and had reported human rights violations to the Human Rights Council and special procedures. The Association was banned by a court

decision on 9 April 2013, in which the court ordered the organization's dissolution. The decision was rendered after an arbitrary process that could not be challenged.

Mr. Al-Shubaili

13. The source submits that as a result of his continued work documenting human rights violations with the Saudi Civil and Political Rights Association, the Saudi authorities summoned Mr. Al-Shubaili to the Bureau of Investigation and Prosecution in Qasim on 18 November 2013 for questioning. He was interrogated on at least four occasions; the last interrogation took place on 17 December 2013.

14. Reportedly, Mr. Al-Shubaili was officially informed of the charges against him for the first time in July 2014. They included: incitement to demonstrate; harming the credibility of religious authorities; contempt of a State constituent body; insulting the Saudi authorities by describing them as a police State that violates human rights; disturbing public opinion by accusing security authorities and high officials of repression, torture, summary execution, enforced disappearance and human rights violations; participating in an unlawful association; refusing to comply with the court decision from 9 April 2013 concerning the dissolution of the Saudi Civil and Political Rights Association; and preparing, storing and sending information that might prejudice public order, on the basis of article 6 (1) of the Anti-Cyber Crime Law. In March 2015, he was informed of the additional charge of communicating with foreign organizations, which referred to his cooperation with the United Nations human rights mechanisms and international non-governmental human rights organizations.

15. According to the source, Mr. Al-Shubaili's secret trial before the Specialized Criminal Court started on 9 April 2015. On 29 May 2016, Mr. Al-Shubaili was sentenced to eight years in prison on the basis of article 6 of the Anti-Cyber Crime Law, and an eight-year social media ban and an eight-year travel ban were imposed on him on the basis of article 6 of the Law on travel documents.[1] He was coerced into signing a pledge promising not to "repeat" the incriminating acts. On 24 July 2016, Mr. Al-Shubaili lodged an appeal against his sentence with the Appeals chamber of the Specialized Criminal Court. In a decision that cannot be further appealed, Mr. Al-Shubaili's sentence was upheld on 15 May 2017.

16. The source informs the Working Group that despite the pronouncement of the prison sentence, Mr. Al-Shubaili was not detained immediately. In the context of a decades-long crackdown against civil society in the country, the Saudi authorities often withhold the implementation of court verdicts against activists and human rights defenders in order to use the threat of imprisonment against them and thus prevent them from carrying out their work for the longest time possible. On 17 September 2017, Mr. Al-Shubaili was arrested in Qasim and is currently held in Onayza prison.

Mr. Al-Hamid

17. The source reports that Mr. Al-Hamid was summoned for interrogation at the Bureau of Investigation and Prosecution in Qasim for the first time on 21 November 2013. He was then called for interrogation a further six times, with the last session taking place on 14 June 2014. His right to legal counsel was denied on every occasion. In addition, he was subjected to ill-treatment, including by being insulted, threatened with an arrest warrant and placed in a detention cell on several occasions during his interrogation.

18. The source reports that Mr. Al-Hamid's trial began before the Buraydah Criminal Court in June 2014. Mr. Al-Hamid was officially informed of the charges against him for

[1] Mr. Al-Shubaili was found guilty of the following acts: accusing the members of the Council of Senior Scholars of being mere tools that ratify blogs in return for moral and financial support, as demonstrated by their decision banning demonstrations; criticizing the Saudi judiciary by saying that it lacks independence and criticizing the integrity and honesty of the judges of the court; accusing the Government of Saudi Arabia of committing human rights violations and failing to prove that legally; pitting public opinion against the guardians of the State and describing them as repressive, and inciting protests, and signing statements urging this via the Internet; insisting on carrying on Saudi Civil and Political Rights Association activities and insisting on defying the legal decision mandating the dismantling of the organization, under article 6 of the Anti-Cyber Crime Law.

the first time during his second hearing, on 3 July 2014. They included: incitement to demonstrate; harming the credibility of religious authorities; contempt of a State constituent body; insulting the Saudi authorities by describing them as a police State that violates human rights; troubling public opinion by accusing security authorities and high officials of repression, torture, summary execution, enforced disappearance and human rights violations; participating in an unlawful association; contacting foreign organizations and providing false information; refusing to comply with the court decision concerning the dissolution of the Saudi Civil and Political Rights Association and persisting in the violation by acting as president of the Association; and preparing, storing and sending information that might prejudice public policy, on the basis of article 6 (1) of the Anti-Cyber Crime Law. Following the second hearing, Mr. Al-Hamid's case was transferred to the Specialized Criminal Court in Riyadh. On 29 May 2016, Mr. Al-Hamid was sentenced to nine years of imprisonment, followed by a nine-year travel ban upon his release. In a decision that cannot be further appealed, on 15 May 2017, Mr. Al-Hamid's sentence was increased to 11 years in prison, an 11-year travel ban upon his release and a fine of 100,000 riyals (about $26,660).

19. According to the source, Mr. Al-Hamid was arrested in Qasim on 16 September 2017 and has been imprisoned in Onayza prison ever since to serve his sentence.

(b) Legal analysis

20. The source submits that the detentions of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid are arbitrary according to categories I, II, III and V of the Working Group.

(i) Category I

21. The source submits that Mr. Al-Nukheifi's detention falls under category I, as he was arrested without a warrant and was not given any reason for his arrest. The circumstances of his arrest did not give any cause for flagrante delicto, and he was only informed of the charges against him during his hearing in August 2017 – more than eight months after his arrest. As such, Mr. Al-Nukheifi's detention was not grounded in law from 17 December 2016 to 21 August 2017, in violation of article 9 of the Universal Declaration of Human Rights and articles 14 (1) (2) (3) (5) (6) and 16 (1) of the Arab Charter on Human Rights.

22. Furthermore, as highlighted by regional and international legal interpretations of the principle of legality in relation to deprivation of liberty, the source argues that the principle of legality entails more than the mere existence of a legal basis for a detention in order to be grounded in law.

23. The source submits that all three individuals were convicted on the basis of the Anti-Cyber Crime Law, which violates the principle of legal certainty. Article 1 (8) defines cybercrime in overly broad terms and includes any action which involves the use of computers or computer networks in violation of the provisions of the law. Article 6 (1) is equally vague, punishing with up to five years in prison anyone who produces, prepares, transmits or stores material impinging on public order, religious values, public morals, and privacy, through the information network or computers. Such provisions allow for the criminalization of peaceful expression, enable arbitrary interpretation and make it difficult for citizens to determine how to act in order to comply with the law.

24. The source argues that, in addition, Mr. Al-Nukheifi was convicted on the basis of the 2017 counter-terrorism Law. The law defines terrorist acts in very broad terms, including any conduct committed by the offender in the implementation of a criminal project, individually or collectively, directly or indirectly, that is intended to disturb public order, undermine public security, destabilize the State or endanger its national unity, obstruct the application of the Basic Law on Governance or part of its provisions, or cause damage to any State facilities or to its natural or economic resources, or attempt to compel one of its authorities to do or to refrain from doing any act or to harm or cause the death of any person when the purpose, in its nature or context, is to terrorize people or force a Government or international organization to carry out or prevent it from carrying out any action, or the incitement or threat to commit acts resulting in the aforementioned purposes.

25. The source further submits that, similarly, the 2017 counter-terrorism Law criminalizes attempts to change the system of government; causing harm to the reputation

or standing of the State; and damaging its public utilities and natural resources. The source recalls that following his country visit to Saudi Arabia, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concluded that anyone challenging the authority or policies of the State could qualify as a terrorist (A/HRC/40/52/Add.2, para. 14).

26. In light of the above, the source recalls that the principle according to which no one shall be deprived of his or her physical liberty except for the reasons and under the conditions established beforehand by domestic law, should also entail that such provisions are in line with international human rights law.[2]

27. The source argues that requirement of lawfulness should not be considered as satisfied merely by compliance with the relevant domestic law: domestic law must itself be in conformity with relevant international standards.[3] Therefore, the assessment of the legality of detention should not be limited to the mere existence of a law but also to the quality of the law in order to meet the standards of lawfulness for deprivation of liberty.[4] The quality of the law refers to its predictability and its potential to create situations of arbitrary detention.

28. In this regard, the source also underlines that the grounds on which the three complainants were arrested ought to be considered as a law criminalizing lèse-majesté. The source notes that the Working Group has elaborated in the past on the propriety of the lèse-majesté law in view of the principle of legality.[5]

29. The source submits that Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid were charged on the basis of the Anti-Cyber Crime Law. In addition, Mr. Al-Nukheifi was convicted under the counter-terrorism law. Both laws criminalize acts falling under the rights to freedom of expression and freedom of conscience and should be read as laws on lèse-majesté. Moreover, those laws contain unclear wording that denies foreseeability for potential defendants and as such install a chilling effect on civil society.[6]

30. In light of the above, the source submits that despite the presence of a domestic legal basis for the arrest of Mr. Al-Shubaili and Mr. Al-Hamid, such legal basis should not be considered as valid under international law to satisfy the exigencies of the principle of legality. As such, the three complainants' detentions fall under category I.

(ii) Category II

31. The source submits that the three individuals' detentions are arbitrary in accordance with category II because they derive directly from the exercise of their right to freedom of expression. With regard to Mr. Al-Nukheifi, the source further submits that the deprivation of his liberty stems from the exercise of his right to freedom of religion or belief. As for Mr. Al-Shubaili and Mr. Al-Hamid, their detentions are also the result of their exercise of their right to association.

[2] Principle IV (principle of legality) of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

[3] European Court of Human Rights, *Plesó v. Hungary*, Application No. 41242/08, Judgment, 2 October 2012, para. 59. See also *Simons v. Belgium*, Application No. 71407/10, Decision, para. 32, where the Court noted that the general principles implied by the Convention for the Protection of Human Rights and Fundamental Freedoms and to which jurisprudence concerning article 5 (1) of that Convention refers are the principle of the rule of law and, connected to the latter, the principle of legal certainty, the principle of proportionality and the principle of protection against arbitrariness, which is, moreover, the very aim of article 5.

[4] The European Court of Human Rights has stated that the law must be sufficiently accessible, precise and foreseeable in its application. Factors relevant to this assessment of the "quality of law" – which are referred to in some cases as "safeguards against arbitrariness" – will include the existence of clear legal provisions for ordering detention, for extending detention and for setting time-limits for detention; and the existence of an effective remedy by which an applicant can contest the "lawfulness" and "length" of his or her continuing detention (*J.N. v. The United Kingdom*, Application No. 37289/12, Judgment, 19 May 2016, para. 77).

[5] See Opinion No. 20/2017.

[6] Ibid., paras. 51–52.

32. The source notes that Mr. Al-Nukheifi was charged with adopting a Takfiri approach by accusing the "guardians of Saudi Arabia" of being infidels. While Mr. Al-Nukheifi did not specifically use those terms, his criticism of the Saudi religious establishment was founded on a religious argument that the State was using religion as a political tool in order to curtail rights and freedoms. Mr. Al-Nukheifi was grounded in his religious interpretation of Islam, which differed from the one adopted by the religious scholars he criticized. The source considers that this criticism should be protected not only as a form of freedom of expression but also as a form of expression of religious dissent in a theocracy such as Saudi Arabia. As such, the charges against Mr. Al-Nukheifi are the direct result of his criticism of the religious authorities in Saudi Arabia, which are conflated with the State authorities. Therefore, this charge ought to be considered as a violation of Mr. Al-Nukheifi's freedom to manifest his religion or belief in teaching, practice, worship and observance, as provided for in article 18 of the Universal Declaration of Human Rights.

33. Reportedly, Mr. Al-Nukheifi was charged with using a personal cell phone and the Internet to store and transfer information that was allegedly harmful to the public order. Similarly, Mr. Al-Shubaili was convicted of, among other charges, accusing the members of the Council of Senior Scholars of being mere tools that ratified blogs in return for moral and financial support, as demonstrated by their decision banning demonstrations; criticizing the Saudi judiciary by saying that it lacked independence and criticizing the integrity and honesty of the judges of the court; and accusing the Government of Saudi Arabia of committing human rights violations and failing to prove that legally.

34. The source informs the Committee that Mr. Al-Hamid was charged with: insulting the Saudi authorities by describing them as a police State that violated human rights; "troubling" public opinion by accusing security authorities and high officials of repression, torture, summary execution, enforced disappearance and human rights violations; and preparing, storing and sending information that might prejudice public policy.

35. In light of the above, the source submits that the charges against the three individuals stem directly from the exercise of their right to freedom of expression, which is in violation of the obligations of Saudi Arabia under article 19 of the Universal Declaration of Human Rights and article 32 (1) of the Arab Charter on Human Rights.[7]

36. In addition, the source submits that Mr. Al-Nukheifi was arrested soon after being consulted by the team of the Special Rapporteur on extreme poverty and human rights and was charged with communicating with and receiving money from foreign groups considered to be enemies of the State, among other charges. Similarly, Mr. Al-Shubaili and Mr. Al-Hamid were members of the Saudi Civil and Political Rights Association, a human rights group that worked with international organizations to document cases of human rights violations before the United Nations human rights mechanisms. As such, in subjecting the individuals to reprisals as a result of their cooperation with the United Nations, the Government of Saudi Arabia, in violation of the right, reaffirmed by the Human Rights Council in its resolution 24/24, of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, bearing in mind that free and unhindered access to and communication with individuals and civil society are indeed indispensable to enable the United Nations and its mechanisms to fulfil their mandates.

37. The source notes that Mr. Al-Shubaili and Mr. Al-Hamid were convicted of participating in an unlawful association and of refusing to comply with the court decision from 9 April 2013 concerning the dissolution of the Saudi Civil and Political Rights Association. This constitutes a violation of the Saudi authorities' obligations with regard to the right to freedom of association as provided for in article 20 (1) of the Universal Declaration of Human Rights and article 24 (5) and (6) of the Arab Charter on Human Rights.

[7] The source also recalls the Working Group's opinion No. 10/2018, paras. 60 and 62.

(iii) Category III

38. The source submits that the three individuals' detention is arbitrary in accordance with category III, due to multiple violations of their fair trial rights.

39. The source informs the Working Group that Mr. Al-Nukheifi was not presented with a warrant upon his arrest, nor was he given any reason for his arrest. As such, the arrest was in violation of principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

40. According to the source, Mr. Al-Nukheifi was brought before a judicial authority and informed of the charges against him for the first time at the beginning of his trial in August 2017 – more than eight months after his initial arrest. Mr. Al-Shubaili was interrogated between November and December 2013 and informed of the charges against him in July 2014. This is in violation of the authorities' obligation to inform defendants of the charges against them without undue delay, as provided for in principle 10 of the Body of Principles and article 14 (3) of the Arab Charter on Human Rights.

41. The source submits that the fact that Mr. Al-Nukheifi was brought before a judicial authority eight months after his arrest means that he was also denied his right to challenge the legality of his detention before a judicial authority. This violates principle 32 of the Body of Principles and articles 8, 9 and 10 of the Universal Declaration of Human Rights. Moreover, the Saudi authorities violated Mr. Al-Nukheifi's right to have the lawfulness of his detention reviewed at regular intervals by an independent judicial body, as enshrined in principle 39 of the Body of Principles. The source recalls that the Working Group has further asserted that habeas corpus is in itself a self-standing human right that can be inferred from articles 8, 9 and 10 of the Universal Declaration of Human Rights (A/HRC/19/57, paras. 59 and 77).

42. According to the source, Mr. Al-Nukheifi was brought to trial on 21 August 2017, over eight months after his arrest. Mr. Al-Shubaili was brought to trial on 9 April 2015, one year and five months after his initial interrogation. Mr. Al-Hamid was brought to trial in June 2014, seven months after his initial interrogation. This constitutes a violation of their respective rights to be tried without undue delay, guaranteed under article 14 (5) of the Arab Charter on Human Rights.

43. The source submits that Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid were also denied their right to be presumed innocent until proven guilty. The Saudi authorities held Mr. Al-Nukheifi in detention for over eight months before his trial began. This, despite the fact that there was no evidence to suggest that the deprivation of his liberty was necessary and proportionate, or that his release would create a substantial risk of flight, harm to others or interference with the evidence or investigation that could not be allayed by other means. In addition, by delaying Mr. Al-Shubaili's trial by one year and five months and Mr. Al-Hamid's trial by seven months, the Government of Saudi Arabia subjected them to a high level of uncertainty and stigma attached to the accusations against them. As a result, the authorities violated their obligations under article 14 (5) of the Arab Charter on Human Rights, principle 39 of the Body of Principles and rule 6 of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

44. The source reports that Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al Hamid were all prosecuted before the Specialized Criminal Court, a court of exception composed of a panel of judges appointed by the Ministry of the Interior and lacking in independence. The source recalls that the Committee against Torture has expressed concern that the Specialized Criminal Court is insufficiently independent of the Ministry of the Interior (CAT/C/SAU/CO/2 and Corr.1, para. 17). As such, the source argues that the executive branch of government is both judge and party in a court that cannot be impartial or respect due process rules, in contravention of article 10 of the Universal Declaration of Human Rights.

45. The source informs the Working Group that Mr. Al-Hamid was denied access to legal counsel during his interrogation. This contravenes principle 18 (3) of the Body of Principles and rule 61 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), both of which stipulate that defendants must have access to legal counsel "without delay".

46. According to the source, Mr. Al-Shubaili's trial was held in camera. While the right to be tried publicly may be limited, the source recalls that this can only happen in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights. The source argues that restricting access to the trial of a peaceful human rights defender is in no way warranted by the interests of justice. As such, in doing so, the authorities violated their obligations under article 10 of the Universal Declaration of Human Rights, articles 13 (2) of the Arab Charter on Human Rights and principle 36 (1) of the Body of Principles.

47. The source reports that Mr. Al-Nukheifi's, Mr. Al-Shubaili's and Mr. Al-Hamid's cases were all appealed before the Specialized Criminal Court's Court of Appeal, a chamber that is under the de facto control of the executive branch of the Government and cannot therefore be considered as independent or impartial. As such, the authorities violated the defendants' right to an effective appeal as provided for in article 16 (7) of the Arab Charter on Human Rights and article 8 of the Universal Declaration of Human Rights.

(iv) Category V

48. The source submits that Mr. Al-Nukheifi's, Mr. Al-Shubaili's and Mr. Al-Hamid's arrest, prosecution and treatment are the direct result of their political opinions, which led to their unequal treatment before the law. In relation to the latter two defendants, it is also due to their status as human rights defenders and affiliation with the Saudi Civil and Political Rights Association.

49. The source recalls that in its concluding observations on the second periodic report of Saudi Arabia, the Committee against Torture stated that it was extremely concerned that the State party had refused to grant operating licences to human rights organizations, which had resulted in the disbanding or suspension of activities of groups (ibid., para. 19). In addition, the Committee expressed concern about reports that the State party had sought to punish individuals who had reported on alleged human rights violations perpetrated by State party's officials or who had objected to State policies on grounds that they were inconsistent with human rights principles (ibid.).

50. In addition, the source notes that Saudi Arabia is the country in the Middle East and North African region that has appeared most frequently in the Secretary-General's annual report on reprisals – a total of seven times (2011–2015, 2017 and 2018) – which also demonstrates a systematic pattern of denying human rights defenders their fundamental rights and guarantees because of their activism.

51. Furthermore, the source recalls that various special procedure mandate holders, in a number of communications sent to the Government of Saudi Arabia, have expressed their concern that the three defendants' arrests and subsequent convictions are the result of their expression of opposing political views.[8] In particular, in a communication on the persecution of members of the Saudi Civil and Political Rights Association, the Working Group, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders raised concern that the information that they continued receiving pointed to a pattern of repression of human rights defenders in the country.[9]

52. The source notes that despite the fact that all three individuals are peaceful human rights defenders, they were tried before a court of exception that has competence over terrorist crimes. In this regard, the source refers to the findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism following his country visit to Saudi Arabia, in which he stated that he had been reliably informed that the Specialized Criminal Court had initially focused on allegations of political violence linked to Al-Qaida. However, that began to change in 2010 and since then the Court had been used increasingly for the prosecution of human rights and political activists (A/HRC/40/52/Add.2, para. 30).

[8] See urgent actions SAU 4/2016, SAU 8/2016, SAU 2/2017 and SAU 12/2017. Available at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[9] See SAU 4/2016.

53. The source argues that while human rights defenders are not the only group of individuals who are being treated unequally before the law as a result of their status (the same pattern would be identifiable for religious minorities for instance), the behaviour of both the executive and judiciary branches of the State clearly shows that the arrest, trials and imprisonment of the three men are a direct result of their political beliefs. Such beliefs, which are grounded in the defence of human rights and the rule of law as well as a different interpretation of Islam – as exemplified by the charges against Mr. Al-Nukheifi – are considered to be "insulting" and unacceptable by the State and pro-State religious scholars. The imprisonment and mistreatment of the three men while in detention must be understood as a form of punishment as a result of the State's intolerance of any form of critical or dissenting views, whether political or religious. The source submits that given the theocratic nature of the State of Saudi Arabia, dissenting political and religious views are often intertwined, as exemplified by the facts of Mr. Al-Nukheifi's case.

54. The source concludes that the detentions of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid stem directly from their peaceful dissenting political and religious opinions, therefore giving their detention an arbitrary character under category V.

Response from the Government

55. On 9 August 2019, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 8 October 2019, detailed information about the current situation of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid.

56. In its response of 18 September 2019, the Government states that Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid were duly arrested, tried and convicted in accordance with the domestic laws and procedures, and that the source has failed to provide any evidence to refute this.

57. The Government stresses that article 36 of the Basic Law of Governance provides for security for all citizens and residents and prohibits confinement, arrest or imprisonment without reference to provisions of the Law. Article 26 affirms the State's obligation to protect human rights in accordance with sharia.

58. Article 3 of the Code of Criminal Procedure also affirms that no penalty may be imposed on any person except upon conviction of an act in violation of sharia or statutory law following a trial conducted in accordance with sharia principles. Therefore, the criminal justice system includes many procedural guarantees and ensures the fundamental principle of the presumption of innocence.

59. According to the Government, the Specialized Criminal Court is an independent body, subject to the same procedures and guarantees applicable in other courts, established by, and its judges appointed by, the Supreme Judicial Council in accordance with the law. The judges must have legal qualifications from accredited universities.

60. The Government argues that all trial procedures and guarantees must comply with the relevant international standards, as it is bound by the human rights conventions to which it is a party. Thus, all actions taken against Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid are in line with international human rights law and the Government's obligations arising under them.

61. The Government asks the Working Group to take into account, in a comprehensive and timely manner, in particular information provided by the State concerned and to always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources that they have duly cross-checked to the best extent possible, in accordance with article 6 (a) and (b) of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council.

Further comments from the source

62. In its reply of 10 October 2019, the source argues that the Government has failed to provide any evidence to corroborate its arguments other than stressing compliance with the

domestic criminal laws and procedures. The domestic laws relied upon by the Government have already been found inconsistent with the principle of legality by United Nations independent experts, and accordingly they cannot provide a valid legal basis for the arrest, trial and imprisonment of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid. National legislation must itself conform to the relevant international standards.[10] The source contends that, in this sense, the assessment of the legality of detention should not be limited to the mere existence of a law but also to the "quality" of the law in order to meet the standards of lawfulness of deprivation of liberty.

63. With regard to the Specialized Criminal Court, the source contends that it is a court of exception as it is composed of a panel of judges who lack judicial independence, appointed by the Ministry of the Interior. In all cases presented before the Specialized Criminal Court, the executive branch is both the judge and party in a court that can neither be considered as impartial and independent nor as respecting any due process rules, which amounts to a clear violation of article 10 of the Universal Declaration of Human Rights.

64. The source also considers that the Government's reference to article 6 (a) and (b) of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council merely aims to question the credibility of the source's allegations, which have not been refuted by the Government.

Discussion

65. The Working Group thanks the source and the Government for their submissions in relation to the deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid.

66. The Working Group notes that multiple urgent actions letters have been sent to the Government concerning these three individuals. The Working Group notes that the Government has replied to those communications.[11]

67. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68).

Category I

68. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without legal basis.

69. The source submits that Mr. Al-Nukheifi was not presented with an arrest warrant or informed of the reasons for his arrest at the time of his arrest. With regard to this allegation, the Government has responded that the three individuals have been arrested in accordance with domestic laws and procedure and that the source has not provided evidence to refute this.

70. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest.[12] The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant. Yet, in the case at hand, the Working Group notes that the Government has not substantiated its claim that a proper warrant was presented at the time of arrest or that the notification of the reasons of the arrest was rendered during the arrest. The Working Group therefore concludes that the arrest of Mr. Al-Nukheifi without a warrant and without invoking the reasons for the arrest is a breach of article 9 of the Universal Declaration of Human Rights.

71. The Working Group also notes that the source states that Mr. Al-Nukheifi and Mr. Al-Shubaili were notified of the charges against them only around eight months after their

[10] The source recalls *Plesó v. Hungary*, para. 59 and *Simons v. Belgium*, para. 32.

[11] SAU 4/2016, SAU 8/2016, SAU 2/2017 and SAU 12/2017. The communications and responses are available at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[12] See, for example, opinions No. 46/2019, No. 33/2019, No. 9/2019, No. 46/2018, No. 36/2018 and No. 10/2018.

arrest and questioning. The Working Group recalls that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed them of the charges promptly.[13] The Government has not contested this allegation. This failure, is therefore a violation of articles 3 and 9 of the Universal Declaration of Human Rights, as well as principle 10 of the Body of Principles, and renders their arrest and detention devoid of any legal basis.

72. Furthermore, the source submits, and the Government does not refute, that Mr. Al-Nukheifi was brought before a judicial authority eight months after his arrest. In this regard, Mr. Al-Nukheifi was also denied his right to challenge the legality of his detention before a judicial authority, in violation of articles 8, 9 and 10 of the Universal Declaration of Human Rights and principle 32 of the Body of Principles. Moreover, the Saudi authorities violated Mr. Al-Nukheifi's right to have the lawfulness of his detention reviewed at regular intervals by an independent judicial body, as enshrined in principle 39 of the Body of Principles. The Working Group notes that habeas corpus is in itself a self-standing human right that can be inferred from articles 8, 9 and 10 of the Universal Declaration of Human Rights (A/HRC/19/57, paras. 59 and 77).

73. Turning to the arguments of the source concerning the vagueness of the laws under which the three individuals were prosecuted and sentenced, the Working Group recalls that the principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law, and regulate their conduct accordingly.[14] The Working Group also recalls that it has previously found that vaguely and broadly worded provisions, such as the Anti-Cyber Crime Law and the 2017 counter-terrorism law invoked in the case at hand, which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.[15]

74. The Working Group further notes that laws that are vaguely and broadly worded may have a deterrent effect on the exercise of the rights to freedom of movement and residence, freedom of asylum, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.[16]

75. Furthermore, the Working Group has made clear in its jurisprudence that detention pursuant to a law that is inconsistent with international human rights law lacks legal basis and is therefore arbitrary.[17] In this context, the Working Group finds that detention under the lèse-majesté provisions in article 6 (1) of the Anti-Cyber Crime Law expressly violates international human rights and lacks legal basis as such.[18]

76. For these reasons, the Working Group considers that the deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid lacks a legal basis and is thus arbitrary, falling under category I.

Category II

77. The source argues that the trials and imprisonment of the three individuals were and are arbitrary, falling within category II, as they resulted from the legitimate exercise of the individuals' right to freedom of expression under article 19 of the Universal Declaration of Human Rights. According to the source, with regard to Mr. Al-Nukheifi, the deprivation of his liberty stems from the exercise of his right to freedom of religion or belief under article

[13] See, for example, opinion No. 10/2015, para. 34. See also opinion No. 46/2019, para. 51.

[14] See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 22.

[15] Opinion No. 10/2018, para. 52.

[16] Ibid., para. 55.

[17] See, for example, opinions No. 69/2018, para. 21, No. 40/2018, para. 45, and No. 43/2017, para. 34 (detention pursuant to a law that criminalized conscientious objection to military service). See also opinion No. 14/2017, para. 49.

[18] Opinion No. 4/2019, para. 49.

18 of the Universal Declaration of Human Rights. The detentions of Mr. Al-Shubaili and Mr. Al-Hamid are also the result of their exercise of their right to association.

78. The Working Group recalls that article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one's rights and freedoms must be for the purposes of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society.

79. The Working Group notes that the Government has admitted in its response that Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid were charged, tried and imprisoned for their online postings in support of the Saudi Civil and Political Rights Association or of political change. The Working Group is of the view that such sharing of information and ideas through online media cannot reasonably qualify as posing threats against morality, public order and the general welfare in a democratic society.

80. The Working Group further notes that Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid were either co-founders or supporters of the Saudi Civil and Political Rights Association, and that the Government's actions were an extension of its persecution against that civic organization, which constitutes unjustified interference with the right to freedom of association.

81. Moreover, the Working Group considers that the criticism of the Saudi religious establishment is not only protected by the freedom of expression but also by the freedom to manifest one's religion, as protected by article 18 of the Universal Declaration of Human Rights. Moreover, the Working Group considers that the arrest and detention of the three individuals, owing to their criticism of the political authorities, is linked to their exercise of their right to take part in the conduct of public affairs under article 21 of the Universal Declaration of Human Rights.

82. The Working Group wishes to highlight that it has considered a number of cases concerning deprivation of liberty by the Government under the provisions of the Anti-Cyber Crime Law.[19] The individuals in these prior cases, as with Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid in the current one, were deprived of their liberty for online comments expressing their political views. For this reason, the Working Group has in the past found prosecution and imprisonment under the Anti-Cyber Crime Law, as well as the counter-terrorism law, to be arbitrary when they result from the legitimate exercise of fundamental human rights.[20]

83. The Working Group is therefore of the opinion that the deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid is arbitrary, falling within category II, as it violates articles 18, 19 and 20 (1) and 21 of the Universal Declaration of Human Rights.

Category III

84. Given its finding that the deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid is arbitrary under category II, the Working Group wishes to emphasize that in such circumstances no trial should take place. However, as the trials have taken place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give their deprivation of liberty an arbitrary character, such that it falls within category III.

85. The Working Group finds that, in the case of Mr. Al-Nukheifi, the arrest was conducted without a warrant, and the right to challenge the legality of his detention before a judicial body was denied. Such an arrest is arbitrary and seriously undermines the capacity to mount an appropriate legal defence, violating article 9 of the Universal Declaration of Human Rights and principles 2 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[21]

86. With regard to the argument of the source that the three individuals were tried before a court of exception lacking independence, the Working Group recalls its previous findings

[19] See, for example, opinions No. 63/2017, No. 93/2017, No. 68/2018, No. 10/2018 and No. 26/2019.

[20] Opinion No. 63/2017, paras. 54–63.

[21] Opinion No. 10/2018, para. 72.

that the Specialized Criminal Court is insufficiently independent of the Ministry of the Interior.[22] In this regard, the Working Group notes that the source has submitted that the Specialized Criminal Court, which tried, convicted and sentenced Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid, is a court of exception with jurisdiction over terrorism cases that is not composed of independent judges but of a panel appointed by the Ministry of the Interior, and that the Committee against Torture has expressed concern that the Court is insufficiently independent of the Ministry of the Interior (CAT/C/SAU/CO/2 and Corr.1, para. 17). The Working Group further notes the assessment of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that the recent power realignment and governmental reorganization has placed the Ministry's investigatory powers directly under the authority of the Public Prosecution and the Presidency of State Security, both of which report directly to the King, and that concerns regarding the lack of independence of the Court therefore remain undiminished (A/HRC/40/52/Add.2, para. 47). Contrary to the Government's response, the Working Group considers that the Specialized Criminal Court thus cannot be considered an independent and impartial tribunal replete with the presumption of innocence and guarantees necessary for defence. The trial before the Court thus contravenes article 10 of the Universal Declaration of Human Rights.

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

88. Moreover, the Working Group considers that the absence of legal counsel for Mr. Al-Hamid during his interrogations between 21 November 2013 and 14 June 2014, during which he was subjected to ill-treatment and placed in a detention cell, violated his rights to legal assistance as part of his right to a fair trial and due process under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

89. Furthermore, the source alleges, and the Government does not contest, that Mr. Al-Shubaili was subjected to in camera hearings before the Specialized Criminal Court, in violation of his right to a public hearing under articles 10 and 11 (1) of the Universal Declaration of Human Rights. The Government has offered no justification that may warrant such an exceptional procedure. The Working Group therefore concludes that these hearings in camera constitute a breach of articles 10 and 11 (1) of the Universal Declaration of Human Rights.

90. Given the above considerations, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid an arbitrary character that falls within category III.

Category V

91. The Working Group will now examine whether the deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid constitutes discrimination under international law for the purpose of category V.

92. The Working Group notes that Mr. Al-Shubaili and Mr. Al-Hamid are human rights defenders and co-founders of the Saudi Civil and Political Rights Association who reported human rights violations to the Human Rights Council and to special procedure mandate holders. Mr. Al-Nukheifi is also a political activist, and has been imprisoned in the past for three years for accusing the local authorities in Jazan of corruption and human rights abuses on television, and in the present case for his consultation with the Special Rapporteur on extreme poverty and human rights, as well as for public calls for the release of members of the Saudi Civil and Political Rights Association and the creation of a directly elected parliament. The Working Group is convinced that the three individuals were targeted because of their activities as human rights defenders.

93. Moreover, the Government's reprisals against Mr. Al-Nukheifi for his consultation with the Special Rapporteur on extreme poverty and human rights and against Mr. Al-

[22] Ibid., para. 73.

Shubaili and Mr. Al-Hamid for their reporting to United Nations human rights mechanisms raise particular concerns for the Working Group.

94. The Working Group notes that Mr. Al-Nukheifi's, Mr. Al-Shubaili's and Mr. Al-Hamid's political views and convictions are clearly at the centre of the present case and that the authorities have displayed an attitude towards them that can only be characterized as discriminatory. Indeed, they have been the target of persecution and there is no explanation for this other than their exercise of the right to express such views and convictions.

95. For these reasons, the Working Group considers that the deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights on the grounds of discrimination based on political or other opinion, as well as on their status as human rights defenders, aimed at and resulting in ignoring the equality of human beings. Their deprivation of liberty therefore falls under category V.

96. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders for appropriate action.

97. In its 28-year history, the Working Group has found Saudi Arabia in violation of its international human rights obligations in about 60 cases.[23] The Working Group is concerned that this indicates a systemic problem with arbitrary detention in Saudi Arabia, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.[24]

Disposition

98. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Issa al-Nukheifi, Abdulaziz Youssef Mohamed al-Shubaili and Issa Hamid al-Hamid, being in contravention of articles 2, 3, 7, 9, 10, 11 (1), 18, 19, 20 (1) and 21 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

99. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights.

100. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

[23] See decisions No. 40/1992, No. 60/1993, No. 19/1995 and No. 48/1995, and opinions No. 8/2002, No. 25/2004, No. 34/2005, No. 35/2005, No. 9/2006, No. 12/2006, No. 36/2006, No. 37/2006, No. 4/2007, No. 9/2007, No. 19/2007, No. 27/2007, No. 6/2008, No. 11/2008, No. 13/2008, No. 22/2008, No. 31/2008, No. 36/2008, No. 37/2008, No. 21/2009, No. 2/2011, No. 10/2011, No. 11/2011, No. 17/2011, No. 18/2011, No. 19/2011, No. 30/2011, No. 31/2011, No. 33/2011, No. 41/2011, No. 42/2011, No. 43/2011, No. 44/2011, No. 45/2011, No. 8/2012, No. 22/2012, No. 52/2012, No. 53/2012, No. 32/2013, No. 44/2013, No. 45/2013, No. 46/2013, No. 14/2014, No. 32/2014, No. 13/2015, No. 38/2015, No. 52/2016, No. 61/2016, No. 10/2017, No. 63/2017, No. 93/2017, No. 10/2018, No. 68/2018, No. 22/2019, No. 26/2019 and No. 56/2019.

[24] A/HRC/13/42, para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

101. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid and to take appropriate measures against those responsible for the violation of their rights.

102. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders for appropriate action.

103. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

104. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid;

(c) Whether an investigation has been conducted into the violation of Mr. Al-Nukheifi, Mr. Al-Shubaili and Mr. Al-Hamid's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Saudi Arabia with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

105. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

106. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

107. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[25]

[*Adopted on 21 November 2019*]

[25] Human Rights Council resolution 42/22, paras. 3 and 7.